

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 2023/125417

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
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SIGNATURE	DATE

In the matter between:

NTOMBIZAKHE ANDYGIRL DLADLA	Plaintiff
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And

WONDERBOY SEVRA MANANA	First Defendant
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ZINHLE PHUMLA MANANA (BORN SIBIYA)	Second Defendant
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MINISTER OF HOME AFFAIRS	Third Defendant
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Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties /their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be the 05 January 2026

JUDGMENT

BOTSI-THULARE AJ

Introduction

- [1] This is action proceeding which was originally a motion application. The motion application appeared before my sister Molopa-Sethosa J on 13 May 2024, and she referred the matter for trial due to material disputes of fact.
- [2] The plaintiff, Ntombizakhe Andygirl Dladla, seeks a declaratory order that a valid customary marriage was concluded between herself and the first defendant, Wonderboy Sevrá Manana, on 30 March 2002 in accordance with the Recognition of Customary Marriages Act 120 of 1998 (the Act). The plaintiff further seeks an order declaring the civil marriage entered into between the first and second defendant, Zinhle Phumla Manana (Born Sibiyá), on 16 December 2012 null and void *ab initio*. If this court is with her, the plaintiff seeks ancillary relief for an order directing the third defendant to register the customary marriage and expunge the civil marriage from the register.
- [3] The first defendant has not opposed the relief sought by the plaintiff and has confirmed the existence of the customary marriage. The sole opposition comes from the second defendant. To this end, the second defendant disputes the validity of the customary marriage between the plaintiff and first defendant. She

has also filed a counterclaim for damages, which is contingent on the outcome of the main application. In a nutshell, the second defendant argues that in the event that this court declares her civil marriage with the first defendant null and void, she then brings a counterclaim in which she alleges that as a consequence of the conduct of the first defendant and/or plaintiff she has suffered patrimonial and non-patrimonial damages in the amount of R3 500 000.00.

- [4] Before dealing with the issues that arise from the above, it is apposite to first provide a summary of the facts that give rise to this matter.

Factual background

- [5] The common facts are that the plaintiff and first defendant met in 1996 and thereafter cohabited. In 2000, they jointly purchased a property in Weselton Extension 6, Ermelo. In December 2001, while the plaintiff was pregnant, the first defendant wrote a letter to the plaintiff's family which initiated lobola negotiations between the plaintiff and first defendant families.
- [6] Subsequently, on 30 March 2002, a delegation from the first defendant's family arrived at the plaintiff's family home in Thusi Village, Ermelo for the purposes of lobola negotiations. Ultimately, the total amount of R52 000.00 was paid by the first defendant's family as lobola payment for the plaintiff. This lobola payment was also accepted by the plaintiff's family.
- [7] Thereafter, the plaintiff and first defendant continued to live together, later acquiring another property in Vosloorus as their home. They raised their child

together, and the first defendant supported the plaintiff financially even after she relocated to Ermelo in 2008 due to illness.

[8] It happened that the first defendant entered into a civil marriage with the second defendant on 16 December 2012 without the plaintiff's knowledge. The plaintiff alleges at the time the first defendant entered into a civil marriage with the second defendant, the first defendant was already married to her in terms of a customary marriage. The first defendant does not dispute the plaintiff's allegation in this regard.

[9] On the other hand, the second defendant alleges that she was unaware of any prior marriage when she entered into a civil marriage with the first defendant civilly. Accordingly, she challenges the validity of the customary marriage, arguing that the procedures followed did not comply with "pure" Zulu custom as she understands it.

Issues

[10] Against this background, this court is required to resolve the following issues:

- a. Whether a valid customary marriage was concluded between the plaintiff and first defendant.
- b. Whether the civil marriage between the first and second defendants is null and void.
- c. Whether the third defendant should be directed to register the customary marriage and expunge the civil marriage from the register.
- d. Whether the second defendant's counterclaim should succeed.

[11] I deal with each of the issues below. Before doing that, I pause to consider the oral evidence presented to this court by the parties in support of their pleaded cases.

Plaintiff's evidence

[12] In summary, the plaintiff testified that she was married to the first defendant in a customary marriage. In this regard, the plaintiff testified that she met the first defendant in 1996 at Ermelo and they fell in love with each other. Thereafter, during 1999, they bought an RDP house which was not far away from her home, and they moved in together. In 2001, the first defendant got an employment in Johannesburg. At that time, the plaintiff realised that she was pregnant.

[13] The plaintiff testified that, as a result, they (i.e. herself and the first defendant) agreed that the first defendant should write a letter to her parents to seek good relationship in a customary marriage. To this end, the plaintiff relied on a lobola letter dated 30 March 2002, being the day on which the first defendant's family came to her family to negotiate good relationship and initiate lobola negotiations.

[14] The plaintiff further testified that when the representatives of the two families met, she was called to come and recognise them and thereafter left the negotiation space. Whilst two parties were negotiating, she heard her mother ululating, and she got so excited symbolising that the lobola money had been accepted. The plaintiff testified that the lobola money represented the cows. In accordance with her culture, she was asked to wrap up the cows in a cloth and took them to overnight at the ancestral point.

[15] Thereafter, the first defendant was called to come and identify who would be the bride and he did successfully point her out. The plaintiff testified that the first defendant had a blanket which he placed over her shoulders.

[16] The plaintiff further testified that 15 cows were demanded, and 8 cows were paid, and 7 cows were outstanding. She claims that the family did not demand the remaining 7 cows because she had already had other children from previous relationships.

[17] According to the plaintiff, the marriage was celebrated, and they did not want anything big. Only her family and friends were available. The first defendant and her did not want a big celebration and they were declared husband and wife on that day. Days celebrating their customary marriage, the first defendant had a job opportunity in Johannesburg, and she came with him and stayed together. She came to consult a gynaecologist as she was heavily pregnant.

[18] She then went back to Ermelo where she stayed in her parental homestead. The first defendant would be coming every weekend for a visit. She delivered the baby on 02 May 2002. After the delivery, she developed some complications which forced her to remain at her parental home. She came to stay with the first defendant at Bedfordview and the latter was employed at Total-NSR. The baby remained with the plaintiff's mother at home.

[19] In 2005 they bought a house at Vosloorus in which she and the first defendant stayed together as husband and wife. In 2007, she fell very sick, and she suffered from depression and other chronic complications such as high blood pressure and kidney problems. The plaintiff testified that she attributed her complications to the conduct of first defendant who was immensely involved in

extra-marital affairs. The plaintiff testified that the first defendant regarded her as the sole cause of his extra-marital affairs. She therefore temporarily left the marital home.

[20] The plaintiff further testified that in 2008 they discussed their issues, and they decided that it would be befitting for her to leave their matrimonial home in order to go home. When she left, she took only her clothing but nothing else. Thereafter, in 2013 the first defendant reduced his visitation at Ermelo, and she became suspicious. She confronted him about the issue, but he reminded her of his work conditions. She testified that she became aware of the second defendant in 2021.

[21] The plaintiff also called her brother, Derrick Dladla (Mr Dladla), who acted as a negotiator during the lobola proceedings to testify in her support. Mr Dladla testified that he knew the first defendant as the *mokgonyana* (son-in-law) of his sister. He further testified that, on 30 March 2002, the family of the first defendant came to pay lobola (bride price). In this regard, his family was represented by his paternal uncle, Melusi, his mother, Precious Dladla, and himself. He acted as the chief negotiator during the proceedings.

[22] He stated that on that particular day, they noticed people standing at the gate. A young boy was sent to enquire about their identity and purpose. The boy was later instructed to open the gate, after which the visitors paid an amount of R50.00. Upon entering, they paid a further R50.00 as the customary fee to commence negotiations (*vula mlomo*). The visitors then introduced themselves as members of the Manana family and indicated that they had come to establish a good relationship between the two families.

[23] He testified that the Dladla family held a brief caucus and initially demanded fifteen (15) cows as lobola. However, they informed the visitors that their daughter already had two children, and as a result, the number of cows was reduced to eight (8).

[24] He further testified that, following the conclusion of the negotiations, the visitors requested to see the bride. They also asked that the son-in-law (first defendant) be allowed to enter the negotiation room. The first defendant was not within the premises at that time, but the visitors were aware of his whereabouts.

[25] The visitors requested that the first defendant should be the one to identify their bride. He testified that the visitors requested that the first defendant himself should identify his bride. After the identification took place, the two ladies who had accompanied the visitors departed. Before the first defendant returned for the second time, the visitors requested that the plaintiff be shown the cows that had been offered as lobola.

[26] In accordance with cultural tradition, the cows were symbolically placed upon and wrapped in a cloth (doek) by his mother, Precious Dladla. The first defendant was thereafter called in for the second time to receive his bride as his wife. He carried a blanket, which he gently wrapped over the plaintiff's shoulders, a symbolic act signifying their union in marriage. From that moment, they were recognised as husband and wife.

[27] He further testified that, following the conclusion of the ceremony, food and refreshments were served. The visitors were offered traditional beer and whisky. Melusi Dladla, acting in accordance with custom, opened the whisky

bottle and poured a small portion into the lid and onto the floor as an offering to honour and appease the ancestors.

First defendant's evidence

[28] The first defendant identified the plaintiff as his lawfully wedded wife, whom he had married in accordance with customary law, and the second defendant as his second wife, whom he married in December 2012. He testified that he did not file an answering affidavit or plea, as he did not dispute having paid lobola for the plaintiff, nor did he deny having entered into a marriage with the second defendant in 2012. He further explained that his failure to respond formally was due to financial constraints and his inability to afford legal representation.

[29] He further testified that the plaintiff remains his lawful wife under customary law, although they have not been cohabiting since 2019. He confirmed that the signature appearing on the lobola letter was his own. He also recognised the Msibi family as being related to him through his mother, who was married into that family.

[30] According to his testimony, all procedures were conducted in accordance with Zulu custom, as the Dladla family are of Zulu heritage. He stated that he was not directly involved in the negotiations but heard people rejoicing outside during the proceedings. He also mentioned that he had given his wife the dress that he himself was meant to wear for the occasion.

[31] He testified further that he possesses a valid marriage certificate with the second defendant, and that the marriage ceremony was solemnised on a Sunday.

Second defendant's evidence

[32] The second defendant testified that she was raised in Phongolo, KwaZulu-Natal, and that she is well acquainted with Zulu customs pertaining to customary marriages. According to the second defendant, the initiation of a customary marriage is prompted by a mutual agreement between a man and a woman who are in a romantic relationship. The man then informs his family of his intention, whereupon the family drafts a formal letter to the woman's family, signifying the proposal. Thereafter, the man selects a delegation to visit and formally approach the woman's family.

[33] Upon arrival at the homestead of the prospective bride, the emissaries customarily stand at the gate and announce their presence by shouting, declaring that they come from the man's family and have come to establish good relations. They also proclaim that they have brought eleven cows for the purpose of lobola, reciting the number and colour of each cow. The second defendant emphasised that, according to Zulu custom, the standard number of cows offered for lobola is eleven.

[34] The family of the prospective bride, upon recognising the visitors, sends out a young boy carrying eleven millipedes to the emissaries who are still gathered at the gate. The emissaries accept the millipedes as a symbolic gesture and are then ushered into the homestead by the boy.

[35] The father, uncles, and/or brothers of the prospective bride then engage in the lobola negotiations. No female persons are permitted to participate in these discussions regarding the bride price. Once inside, the emissaries formally introduce themselves and state the purpose of their visit.

[36] The woman's representatives thereafter summon the prospective bride to identify the emissaries from the man's family, after which she withdraws from the negotiation proceedings.

[37] The second defendant stated that, in terms of Zulu custom, a cow is traditionally allocated to the mother of the bride, but this is only claimed if the daughter is still a virgin. If she is not, the cow for the mother is also subtracted. Once consensus is reached, the agreement is recorded in writing, and all members of both delegations sign the document. This marks the conclusion of the negotiation process, and the man's emissaries thereafter return home to report to their family.

[38] After some time, the groom-to-be enquires from the bride-to-be about the number and particulars of the individuals who are to receive gifts. The bride-to-be relays this request to her family, who later prepare and send the list to the groom's family.

[39] On the second visit, the emissaries from the groom's side, now comprising all family members, arrive on a Saturday morning, singing and ululating in celebration. Delegates from both families then hold further discussions to resolve any outstanding matters, including the final settlement of the lobola.

[40] Upon finalisation of the lobola negotiations and payment, the bride's family slaughters a goat, applying its gall on the groom-to-be as a symbolic act of welcoming him into the family. The groom's family, in turn, slaughters a cow as a gesture signifying the union of the two families as one.

[41] The emissaries of the groom remain overnight at the bride's homestead. On Sunday, the celebrations commence with the clothing of the bride's family in a ceremony known as umembeso. During this occasion, the bride adorns herself in the garments and accessories provided by her in-laws, including shoes and a shawl to drape over her shoulders. The sisters and aunts of the groom then distribute the gifts to the designated recipients, dressing them in accordance with custom.

[42] The second defendant further testified that she met the first defendant in July 2007 at Phongolo, KwaZulu-Natal. He offered her a lift to Ermelo, in the Mpumalanga Province. During the journey to Ermelo, the first defendant proposed love to her, and she accepted. They exchanged cellphone numbers, and thereafter, she visited him at his residence in Vosloorus, while he, in turn, visited her.

[43] The second defendant and the first defendant entered into a civil marriage on 16 December 2012 and such marriage was solemnised by a pastor. The second defendant testified that the first defendant never informed her that he was married.

[44] However, he introduced her to his child, whose grandmother she also came to know. The second defendant stated that she only became aware of the alleged marriage between the first defendant and plaintiff upon being served with court papers.

The law on declaratory order or relief

[45] Under common law, the High Court did not have jurisdiction to grant declaratory

relief¹. Such power was conferred upon the High Court by the provisions of section 102 of the General Law Amendment Act 46 of 1935. Currently it is governed by section 21 of the Superior Courts Act 10 of 2013 (Superior Court Act).

[46] In terms of the provision of Section 21(1)(c) of the Superior Courts Act, 10 of 2013, the High Court may grant a declaratory order without any consequential relief sought. The section provides as follows:

“21(1) A Division has jurisdiction over all persons resident or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power –

(a) ...

(b) ...

(c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination”.

[47] The correct approach to section 21(1)(c), the wording of which is similar to the erstwhile power conferred upon the court under section 10(1)(a)(iii) of the now

¹ *Geldenhuys and Neethling v Beuthin* 1918 AD 426.

repealed Supreme Court Act 58 of 1959, was summed up by Corbett CJ in *Shoba v OC, Temporary Police Camp, Wagendrift Dam*² as follows:

“An existing or concrete dispute between persons is not a pre-requisite for the exercise by the Court of its jurisdiction under this subsection, though the absence of such a dispute may, depending on the circumstances, cause the Court to refuse to exercise its jurisdiction in a particular case (see *Ex parte Nell* 1963 (1) SA 754 (A), at 759H - 760B). But because it is not the function of the Court to act as an adviser, it is a requirement of the exercise of jurisdiction under this subsection that there should be interested parties upon whom the declaratory order would be binding (Nell's case, at 760B - C). In Nell's case, supra, at 759A - B, Steyn CJ referred with approval to the following statement by Watermeyer JA in *Durban City Council v Association of Building Societies* 1942 AD 27, at 32, with reference to the identically worded sec 102 of Act 46 of 1935:

"The question whether or not an order should be made under this section has to be examined in two stages. First the Court must be satisfied that the applicant is a person interested in an 'existing, future or contingent right or obligation', and then, if satisfied on that point, this Court must decide whether the case is a proper one for the exercise of the discretion conferred on it."

[48] The Supreme Court of appeal in *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd*³ confirmed the two-stage approach adopted by the

² 1995 (4) SA 1 (AD) at 29.

³ 2005 (6) SA 205 (SCA) at para 18.

then Appellate Division in *Durban City Council v Association of Building Societies*⁴ and held that:

“..., the two-stage approach under the subsection consists of the following. During the first leg of the enquiry the court must be satisfied that the applicant has an interest in an ‘existing, future or contingent right or obligation’. At this stage the focus is only upon establishing that the necessary conditions precedent for the exercise of the court’s discretion exist. If the court is satisfied that the existence of such conditions has been proved, it has to exercise the discretion by deciding either to refuse or grant the order sought. The consideration of whether or not to grant the order constitutes the second leg of the enquiry.”

[49] The import of the above case law is that, when considering the grant of declaratory relief, the court will not grant such order where the issue raised before it is hypothetical, abstract and academic, or where the legal position is clearly defined by statute.⁵

[50] In my view, a declaratory order is an order by which a dispute over the existence of some legal right or entitlement is resolved. To this end, we submit that the dispute in this application is about the alleged existence of a legal right over the customary marriage which the plaintiff seeks to enforce against the second defendant.

[51] Furthermore, there must be a legal basis upon which the declaratory order in favour of the plaintiff can be made. In other words, it would not ordinarily be appropriate where one is dealing with events which occurred in the past.

⁴ 1942 AD 27 at 32.

⁵ *Ex parte Noriskin* 1962 (1) SA 856 (D) .

However, it should be noted that such events, if they give rise to a cause of action, would entitle the litigant to an appropriate remedy.

[52] In this matter, I am of the view that there is legal basis upon which the declaratory order can be made in favour of the plaintiff. Lastly, the plaintiff has demonstrated that she has a substantial interest in the subject matter.

[53] I now proceed to deal with the merits of this matter. The starting point in this regard is the law regulating conclusion of valid customary marriages in South Africa.

The Law on customary marriages

[54] The Recognition of Customary Marriages Act 120 of 1998 (the Act) provides for the requirements of valid customary marriages in South Africa. The Act sets out the requirements for validity of a customary marriage in Section 3 as follows:

“(1) For a customary marriage entered into after commencement of this Act to be valid-

(a) The prospective spouses-

(i) must both be above the age of 18 years; and

(ii) must both consent to be married to each other under customary law; and

(b) the marriage must be negotiated and entered into or celebrated in accordance with customary law.”

[55] Whilst the requirements mentioned in section 3(1)(a) of the Act are self-explanatory and clear, one of the biggest contentions with regards to section 3(1)(b) of the Act is that it is very vague and does not specify the actual requirements for a valid customary marriage.

[56] Section 3(1)(b) of the Customary Marriages Act provides that the marriage must be negotiated and entered into or celebrated in accordance with customary law. In this regard, 'customary law' is defined in section 1 of the Act as the customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those peoples.

[57] As stated above, it is worth stressing that section 3(1)(b) does not stipulate the requirements of customary law which must be met to validate a customary marriage. However, in giving content to section 3(1)(b), the Supreme Court of Appeal in *Moropane v Southon*⁶ observed that:

“The requirement in s 3(1)(b) that ‘the marriage must be negotiated and entered into or celebrated in accordance with customary law’ is clear and unambiguous. Even the Legislature did not consider it necessary to define it. This is understandable as customary law is as diverse as the number of different ethnic groups we have in this beautiful country. Although Africans in general share the majority of customs, rituals and cultures, there are some subtle differences which, for example, pertain exclusively to the Ngunis, Basotho, Bapedi, VhaVenda and the Vatsonga. This is due to the pluralistic nature of African societies.”

[58] Cognisant of the above reality, the Supreme Court of Appeal went further to provide guidance on how the requirement in section 3(1)(b) should be interpreted by courts. In this regard, the Supreme Court of Appeal stated that:

⁶ [2014] ZASCA 76 (29 May 2014) at para 35.

“It follows that it would be well-nigh impossible and undesirable to attempt an exhaustive and all-inclusive definition of a phrase which is susceptible to variations depending on which particular ethnic group it relates to. The most salutary approach to ascertaining the real meaning of this requirement is by examining the current cultural practices and customary law of that particular ethnic group as the Constitutional Court did in *MM v MN*.”⁷ (Footnote Omitted)

[59] Similarly, the Supreme Court of Appeal in *Mbungela and Another v Mkabi and Others*⁸ observed:

“It is established that customary law is a dynamic, flexible system, which continuously evolves within the context of its values and norms, consistently with the Constitution, so as to meet the changing needs of the people who live by its norms. The system, therefore, requires its content to be determined with reference to both the history and the present practice of the community concerned. As this Court has pointed out, although the various African cultures generally observe the same customs and rituals, it is not unusual to find variations and even ambiguities in their local practice because of the pluralistic nature of African society. Thus, the legislature left it open for the various communities to give content to s 3(1)(b) in accordance with their lived experiences.”

[60] In other words, the meaning of the phrase “requirements of customary law” in the context of section 3(1)(b) should be understood by first accepting the fact that customary law is not static but a dynamic, flexible system, which

⁷ *Id* at para 37.

⁸ 2020 (1) SA 41 (SCA) at para 17.

continuously evolves within the context of its values and norms.⁹ On this basis, section 3(1)(b) does not therefore provide specific, rigid rules but instead allowed different communities to define and apply the requirements for their customary marriages based on their unique cultural practices and lived realities.

Whether the customary marriage between the plaintiff and first defendant is valid

[61] It is unequivocal that there is a dispute of fact regarding whether the plaintiff was married to the first defendant in terms of the custom. The validity of such marriage is vehemently challenged. It is disputed that the marriage was negotiated and entered into or celebrated in accordance with customary law.

[62] The plaintiff contends that the marriage was negotiated and entered into or celebrated in accordance with the Zulu custom. The second defendant disputes that the marriage was ever entered into in terms of the Zulu custom.

[63] The second defendant's case rests largely on her assertion that the rituals performed on 30 March 2002 deviated from a strict, uniform version of Zulu custom. She emphasised the absence of certain practices (e.g., the offering of eleven millipedes, a separate umembeso ceremony, the non-participation of women in negotiations) and pointed to alleged inconsistencies in the evidence.

[64] I find the second defendant's approach to be unduly formalistic and inconsistent with the contemporary judicial understanding of customary law. The

⁹ This point was also stressed by Supreme Court of Appeal in *Tsambo v Sengadi* [2020] ZASCA 46 (30 April 2020) at para 17.

Constitutional Court in *MM v MN*¹⁰ emphasised that courts must ascertain the “living” customary law of the specific community involved, not impose a textbook orthodoxy.

[65] In other words, a perfunctory compliance approach is not the best way of determining whether the plaintiff and first defendant concluded their customary marriage. The diversity and pluralistic nature of the African communities practicing customs, rituals and cultures makes it impossible to develop a perfunctory compliance approach of what may constitute complete requirements for a valid customary marriage. As the Supreme Court of Appeal described it, customary law is a dynamic system of our law.¹¹

[66] The evidence shows that the Dladla family, while of Zulu heritage with Swazi influences, follows its own adapted customary practices. This is permissible. The core elements of lobola negotiation, payment, family consent, symbolic handover, and celebration were present. The credibility of the plaintiff’s witnesses (i.e. the plaintiff and Mr Dladla) was sound. Their testimonies were consistent on the material facts: the date, the parties present, the agreement on lobola, the payment, the handover, and the subsequent cohabitation. Minor discrepancies (e.g., who wrapped the money, the exact number of times the first defendant entered the room) are to be expected after 23 years and do not undermine the core narrative.

[67] In addition, the first defendant’s evidence was pivotal. He unequivocally confirmed the marriage, the lobola payment, and his ongoing recognition of the

¹⁰ 2013 (4) SA 415 (CC).

¹¹ See *Moropane v Southon* [2014] ZASCA (29 May 2014).

plaintiff as his wife. His affidavit and testimony were not successfully impugned as being under duress. His admission is fatal to the second defendant's denial.

[68] From the plaintiff and first defendant testimonies, it is also clear that there was a clear intent from themselves and their families to conclude a customary marriage on the day in question. This is in line with the reasoning of the Supreme Court of Appeal in *Mbungela*¹² where it was held:

“To sum up: The purpose of the ceremony of the handing over of a bride is to mark the beginning of a couple's customary marriage and introduce the bride to the groom's family. It is not an important but not necessarily a key determinant of a valid customary marriage. Thus, it cannot be placed above the couple's clear volition and intent where, as happened in this case, their families, who come from different ethnic groups, were involved in, and acknowledged the formalisation of their marital partnership and did not specify that the marriage would be validated only upon bridal transfer. I am satisfied in all the circumstances that the essential requirements for a valid customary marriage were met. The appeal must accordingly fail”. [Underlined Emphasis]

[69] The overwhelming evidence before this court is that the plaintiff and first defendant considered themselves as husband and wife for all intents and purposes. The plaintiff's testimony, corroborated by the first defendant's own admission, demonstrates unequivocally that both parties consented to the marriage. The first defendant confirmed that he indeed married the plaintiff by customary law and that she remains his lawful wife, although they are presently separated.

¹² *Mbungela* at para 30.

[70] The lobola letter, despite the second defendant's criticisms, serves as credible contemporaneous evidence. It records the families involved, the agreement on lobola, and bears the first defendant's signature. The fact that it references the "Msibi" family (the first defendant's maternal relatives) is explained by the evidence and is not a material defect. The letter's purpose was to record the agreement, which it did.

[71] In my view, the second defendant's personal knowledge of the events of 30 March 2002 is non-existent, as she was not present. Therefore, her opinion on whether the rituals were "correct" is just that — an opinion. The reality is that she is not an expert on customary law, and her version of a monolithic Zulu custom is not supported by case law referred to in this judgment.

[72] On a balance of probabilities, I therefore find that the plaintiff has discharged the onus of proving that her marriage with the first defendant was negotiated and celebrated in accordance with the customary law of their community. The families met, lobola was negotiated and paid, the bride was handed over, and a celebration ensued. The parties then lived as husband and wife for many years, publicly presenting themselves as such.

Whether the civil marriage between the first and second defendants is null and void

[73] The plaintiff became aware only in 2018 that the first defendant was cohabiting with another woman (i.e. the second defendant). The first defendant later admitted that he had contracted a civil marriage with the second defendant on 16 December 2012.

[74] In terms of Section 3(2) of the Act, a person who is a party to a subsisting customary marriage may not contract a marriage under the Marriage Act 25 of 1961 with any other person during the subsistence of such customary marriage.

[75] Therefore, having found that a valid customary marriage subsisted between the plaintiff and the first defendant on 16 December 2012, it follows that the civil marriage contracted between the first and second defendants on that date is null and void *ab initio*, as it was entered into while the first defendant was still a party to a subsisting customary marriage with the plaintiff.

Whether the third defendant should be directed to register the customary marriage and expunge the civil marriage from the register

[76] Given that this court finds that the civil marriage contracted between the first and second defendants on 16 December 2012 is null and void *ab initio*, this court will then have to determine what should happen to both marriages. The evidence before this court demonstrates that the customary marriage was concluded before the civil marriage. However, the customary marriage was not registered in terms of the Act. On the other hand, the civil marriage was registered.

[77] In this regard, Section 4(9) of the Act states that failure to register a customary marriage does not affect its validity. The plaintiff testified that she was unaware of the registration requirement. Given the circumstances, including the relative newness of the Act in 2002 and the *bona fide* belief that the marriage was complete, it is appropriate to grant condonation and to order that the marriage be registered. The Minister of Home Affairs has extended the registration deadline to 31 August 2026, making this feasible.

Second defendant's counterclaim

[78] As already indicated in paragraph 3 of this judgment, the second defendant's counterclaim is for patrimonial and non-patrimonial damages in the amount of R3 500 0000.00. According to the second defendant, she suffered these damages because of the conduct of the first defendant and/or plaintiff.

[79] It should be noted that no evidence was tendered to enable this court to adjudicate on this counterclaim. The counterclaim was not even canvassed in the closing arguments filed by the parties in this matter. It would therefore be unfair to all the parties if this court was to decide on the merits regarding the counterclaim. In my view, the interest of justice dictates that the allegation regarding the counterclaim be ventilated in a separate hearing to these proceedings.

[80] Accordingly, it is my considered view that the second defendant's counterclaim be postponed *sine die*.

Conclusion

[81] The plaintiff has made out a proper case for the relief that she seeks for the customary marriage to be declared valid. The plaintiff satisfied the requirements stated in the Act and the customary marriage was entered into in terms of customary law. In addition, the plaintiff has demonstrated that the civil marriage, between the first and second defendants was entered during the subsistence of customary marriage, and without her consent, and therefore should be declared null and void.

Costs

[82] The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there be good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. The plaintiff has been successful in this matter. As a successful party, I am of the view that the costs should follow the results.

Order

[83] In the result, I make the following order:

1. It is declared that that a valid customary marriage was concluded between the Plaintiff, Ntombizakhe Andygir! Dladla and First Defendant, Wonderboy Sevrá Manana on 30 March 2002 in accordance with the Recognition of Customary Marriages Act 120 of 1998.
2. The Third Defendant is ordered to register the customary marriage between the Plaintiff, Ntombizakhe Andygir! Dladla and First Defendant, Wonderboy Sevrá Manana in terms of section 4 of the Recognition of Customary Marriages Act 120 of 1998 and to issue the marriage certificate within 20 (twenty) days from the date of service of this order.
3. It is declared that the civil marriage entered into between the First Defendant, Wonderboy Sevrá Manana, and the Second Defendant, Zinhle Phumla Manana (born Sibiya), on 16 December 2012 is null and void *ab initio*.

4. The Third Defendant, the Minister of Home Affairs, is directed to expunge the civil marriage between Wonderboy Sevra Manana and Zinhle Phumla Manana (born Sibiya) from the national marriage register.
5. The Second Defendant's counterclaim is postponed *sine die*.
6. The Second Defendant is ordered to pay the costs of the application, including the costs of counsel.

MD BOTSI-THULARE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the Plaintiff:

Instructed by:

Adv J Mawila

Mthembu Cynthia.C Attorneys

c/o Makhubele Attorneys

Pretoria

Counsel for the Second Defendant: Adv B.K Hlangwane

Instructed by:

KE Mtsweni Inc. Attorneys

Mamelodi East, Pretoria

Date of Hearing:

08, 09, 14 & 16 October 2025

Date of Judgment:

5 January 2026